

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

GOLO, LLC,

Plaintiff,

v.

Goli Nutrition Inc., a Canadian Corporation,
Goli Nutrition Inc., a Delaware Corporation and
Michael Bitensky,

Defendants.

C.A. No. 20-667-RGA-SRF

JURY TRIAL DEMANDED

**PUBLIC VERSION FILED
JUNE 23, 2023**

Goli Nutrition Inc., a Canadian Corporation and
Goli Nutrition Inc., a Delaware Corporation,

Counter-Plaintiffs,

v.

GOLO, LLC and Christopher Lundin,

Counter-Claim Defendants.

**DECLARATION OF MELISSA A. REINCKENS IN SUPPORT OF
GOLI NUTRITION, INC.'S MOTION FOR SUMMARY JUDGMENT**

I, Melissa A. Reinckens, declare and state as follows:

1. I am attorney of record for Defendants and Counter-Plaintiffs Goli Nutrition Inc., a Canadian corporation, Goli Nutrition Inc., a Delaware corporation, and Michael Bitensky (collectively, "Goli Nutrition") in this matter. I submit this Declaration in support of Goli Nutrition's Motion for Summary Judgment and to place before the Court documents referenced in Defendants' contemporaneously filed Memorandum of Law.

2. Attached hereto as **Exhibit 1** is a true and correct copy of screenshots from the Goli Nutrition website, available at www.goli.com.

3. Attached hereto as **Exhibit 2** is a true and correct copy of IBISWorld Weight Loss Services in the US, June 2022.

4. Attached hereto as **Exhibit 3** is a true and correct copy of GOLODE_00091143 produced by GOLO LLC in this matter, showing “iSpot Competitive Weight Loss” chart.

5. Attached hereto as **Exhibit 4** is a true and correct copy of GOLODE_00118408-14, produced by GOLO LLC in this matter, showing summary of GOLO’s video spots.

6. Attached hereto as **Exhibit 5** is a true and correct copy of IBISWorld, Online Vitamin & Supplement Sales in the US, Industry Report OD5091, February 2023.

7. Attached hereto as **Exhibit 6** is a true and correct copy of GOLI 0115849-941, produced by Goli Nutrition in this matter, showing Goli Nutrition’s Management Presentation.

8. Attached hereto as **Exhibit 07** is a true and correct copy of Apple Cider Vinegar: Skyrocketing Growth & Demand for Organic Products, available at <https://clearcutanalytics.com/apple-cider-vinegar-skyrocketing-growth-demand-for-organic-products/>.

9. Attached hereto as **Exhibit 08** is a true and correct copy of GOLI 0167806, produced by Goli Nutrition in this matter, showing “Topline SPINS Overview” document.

10. Attached hereto as **Exhibit 09** is a true and correct copy of GOLI 0030470, produced by Goli Nutrition in this matter, showing competitors analysis.

11. Attached hereto as **Exhibit 10** is a true and correct copy of GOLI 0009670, produced by Goli Nutrition in this matter, showing ashwagandha market research.

12. Attached hereto as **Exhibit 11** is a true and correct copy of excerpts from the March 3, 2023 Rebuttal Expert Report of Jeffrey A. Stec, Ph.D.

13. Attached hereto as **Exhibit 12** is a true and correct copy of excerpts from the January 6, 2023 Deposition of Deepak Agarwal.

14. Attached hereto as **Exhibit 13** is a true and correct copy of excerpts from the January 5, 2023 Videotaped Deposition of Christopher Lundin.

15. Attached hereto as **Exhibit 14** is a true and correct copy of excerpts from the January 6, 2023 Videotaped Deposition of Christopher Lundin.

16. Attached hereto as **Exhibit 15** are true and correct copies of GOLODE_00011511 (fall campaign from Shadowbox Pictures dated August 27, 2020 with script for commercial advertisement “Remember, when you need to lose weight, you need to GO LOW! That’s GOLO.com”), GOLODE_00026084 (email from Chris Lundin dated May 9, 2016 stating “To learn how to reverse Insulin Resistance and lose weight effectively go to golo dot com (pronounced as GO-LOW)”), and GOLODE_00092886 (GOLO asserting that the term “GoLow” is “phonetically equivalent” to “GOLO”), all produced by GOLO LLC in this matter.

17. Attached hereto as **Exhibit 16** are true and correct copies of GOLODE_00031533-38, GOLODE_00032886-0897, GOLODE_00034289-98, GOLODE_00051745-48, GOLODE_00051749-766, GOLODE_00053859-63, GOLODE_00058183-185, GOLODE_00125328-30, and GOLOD_00125619-21, all produced by GOLO LLC in this matter, a sampling of documents showing GOLO purchased keywords “go low”, “golow”, “go low diet”, “+go +low”, and “golow.com” among others.

18. Attached hereto as **Exhibit 17** is a true and correct copy of GOLODE_00011545, produced by GOLO LLC in this matter, showing that Golow.com redirects to GOLO.com.

19. Attached hereto as **Exhibit 18** is a true and correct copy of GOLI 0154872, produced by Goli Nutrition in this matter, showing the “GOLOSE WEIGHT GOLOOK GREAT GOLOVE LIFE” exhortations.

20. Attached hereto as **Exhibit 19** is a true and correct copy of GOLODE_00093249, produced by GOLO LLC in this matter, showing GOLO’s trademark registration history.

21. Attached hereto as **Exhibit 20** are true and correct copies of GOLI 0035341 and GOLI 0013817, all produced by Goli Nutrition in this matter, showing representative uses that Goli makes of its mark

22. Attached hereto as **Exhibit 21** are true and correct copies of GOLI 0148015, GOLI 0167044, GOLI 0167055, all produced by Goli Nutrition in this matter, showing representative uses that GOLO makes of its mark.

23. Attached hereto as **Exhibit 22** are true and correct copies of GOLI 0147805, GOLI 0147807, and GOLI 0147830, produced by Goli Nutrition in this matter, and showing advertisements from the “goloforlife” Instagram account.

24. Attached hereto as **Exhibit 23** are true and correct copies of BRANDSTAR0003999, BRANDSTAR0004671, and BRANDSTAR0002239, all produced by BrandStar in this matter, and discussing the “GOLO for Life” Tik Tok account.

25. Attached hereto as **Exhibit 24** are true and correct copies of GOLI 0117503 (label for ashwagandha gummies), GOLI 0035341 (label for ACV gummies), and GOLI 0013817 (brand style guide), all produced by Goli Nutrition in this matter.

26. Attached hereto as **Exhibit 25** are true and correct copies of GOLI 0167187, GOLI 0167234, GOLI 0167217, GOLI 0167197, and GOLI 0167194 all produced by Goli Nutrition in this matter, showing use of other “GO” or “LO/LOW” formative marks in the weight loss industry.

27. Attached hereto as **Exhibit 26** is a true and correct copy of excerpts from the March 3, 2023 Expert Rebuttal Report of Hal Poret in Matter of GOLO, LLC v. Goli Nutrition Inc.

28. Attached hereto as **Exhibit 27** is a true and correct copy of excerpts from the March 3, 2023 Rebuttal Expert Report of Keith R. Ugone, Ph.D.

29. Attached hereto as **Exhibit 28** is a true and correct copy of Best Diets Overall 2023, U.S. News, January 3, 2023, available at <https://health.usnews.com/best-diet/best-diets-overall>; Best Diet Plans of 2023, Reviewed by Experts, Forbes Health, February 16, 2023, available at <https://www.forbes.com/health/body/best-diets/>; and The 9 Best Diet Plans for Your Overall Health, Healthline, November 10, 2020, available at https://www.healthline.com/nutrition/best-diet-plans#TOC_TITLE_HDR_2.

30. Attached hereto as **Exhibit 29** is a true and correct copy of GOLODE_00048178, produced by GOLO LLC in this matter, showing an “About myGOLO” sell sheet.

31. Attached hereto as **Exhibit 30** is a true and correct copy of GOLODE_00144143, produced by GOLO LLC in this matter, showing correspondence between GOLO and the FTC.

32. Attached hereto as **Exhibit 31** is a true and correct copy of excerpts from the December 14, 2022 Videotaped Deposition of Jennifer Brooks.

33. Attached hereto as **Exhibit 32** is a true and correct copy of GOLODE_00143624, produced by GOLO LLC in this matter, showing email chain between GOLO and the FTC.

34. Attached hereto as **Exhibit 33** is a true and correct copy of GOLODE_00126135, produced by GOLO LLC in this matter, showing spreadsheet made by GOLO purportedly documenting consumer interactions where consumers allegedly confused GOLO and Goli Nutrition.

35. Attached hereto as **Exhibit 34** is a true and correct copy of excerpts from the December 15, 2022 Deposition of Eden Covington.

36. Attached hereto as **Exhibit 35** are true and correct copies of GOLODE_00021013 and GOLODE_00021169, produced by GOLO LLC in this matter, showing emails from GOLO customer service representatives noting that they “couldn’t get [callers] to say ‘goli’” despite attempting to persuade them to do so.

37. Attached hereto as **Exhibit 36** are true and correct copies of GOLI 0136644, GOLI 0136892, GOLI 0136943, GOLI 0136983, GOLI 0137046, GOLI 0137105, and GOLI 0137275, all produced by Goli Nutrition in this matter, compiling “Golo” mentions made to Goli Nutrition’s customer service department.

38. Attached hereto as **Exhibit 37** is Omitted.

39. Attached hereto as **Exhibit 38** is a true and correct copy of excerpts from Defendant Goli Nutrition Inc., a Canadian Corporation’s Supplemental Responses and Objections to Plaintiff GOLO LLC’s First Set of Interrogatories, dated January 6, 2023.

40. Attached hereto as **Exhibit 39** is a true and correct copy of excerpts from the December 20, 2022 Deposition of Kathleen Power.

41. Attached hereto as **Exhibit 40** is a true and correct copy of GOLI 0109538, produced by Goli Nutrition in this matter, showing email chain with Gaspard Agence during Goli Nutrition’s logo design.

42. Attached hereto as **Exhibit 41** is a true and correct copy of excerpts from the December 12, 2022 Video-Recorded Deposition of Montgomery Bernardi.

43. Attached hereto as **Exhibit 42** is a true and correct copy of excerpts from the December 1, 2022 Oral Deposition of Bruce Weiss.

44. Attached hereto as **Exhibit 43** is a true and correct copy of excerpts from the December 21, 2022 Remote Videotaped Deposition of Cameron Maag.

45. Attached hereto as **Exhibit 44** is a true and correct copy of a screenshot from the GOLO website, available at www.golo.com.

46. Attached hereto as **Exhibit 45** is a true and correct copy of excerpts from the December 15, 2022 Videotaped Deposition of Michael E. Bitensky.

47. Attached hereto as **Exhibit 46** is a true and correct copy of GOLI 0167856, produced by Goli Nutrition in this matter, discussing award for Goli Nutrition's "Taste Your Goals" ad campaign).

48. Attached hereto as **Exhibit 47** is a true and correct copy of excerpts from Plaintiff and Counter-Defendant GOLO, LLC's and Counter-Defendant Christopher Lundin's Responses and Objections to Defendant's Second Set of Requests for Admission, dated November 16, 2022.

49. Attached hereto as **Exhibit 48** is a true and correct copy of excerpts from Plaintiff GOLO, LLC's Responses and Objections to Defendant's First Set of Interrogatories, dated April 6, 2021.

50. Attached hereto as **Exhibit 49** is a true and correct copy of excerpts from the December 9, 2022 Oral Deposition of Marc Icasiano.

51. Attached hereto as **Exhibit 50** are true and correct copies of GOLODE_00143705-709; GOLODE_00143710-713; GOLODE_00143714-718; GOLODE_00143719-722, all produced by GOLO LLC in this matter, compiling GOLO's profit and loss statements.

52. Attached hereto as **Exhibit 51** is a true and correct copy of GOLODE_00064028-030, produced by GOLO LLC in this matter, showing poll data from survey conducted by GOLO

reflecting that 85% of respondents indicated they first learned about GOLO after seeing a TV commercial.

53. Attached hereto as **Exhibit 52** is a true and correct copy of Defendant Goli Nutrition Inc., a Canadian Corporation's Responses and Objections to Plaintiff GOLO's First Set of Interrogatories, dated March 17, 2021.

54. Attached hereto as **Exhibit 53** is a true and correct copy of GOLI 0013847, produced by Goli Nutrition in this matter, showing Goli Nutrition's advertising expenditures.

55. Attached hereto as **Exhibit 54** is a true and correct copy of GOLI 0071528, produced by Goli Nutrition in this matter, showing Goli Nutrition's advertising expenditures.

56. Attached hereto as **Exhibit 55** is a true and correct copy of excerpts from the February 3, 2023 Expert Report of Dr. Alyson Mitchell.

57. Attached hereto as **Exhibit 56** is a true and correct copy of excerpts from the March 3, 2023 Expert Report by Sean F. O'Keefe, Ph.D.

58. Attached hereto as **Exhibit 57** are true and correct copies of GOLI 0101425-37, GOLI 0102081, GOLI 0106211-30, GOLI 0106184-85, GOLI 0106187-96, GOLI 0106198-205, and GOLI 0106207-10, all produced by Goli Nutrition in this matter, showing Certificates of Analysis produced by Goli Nutrition.

59. Attached hereto as **Exhibit 58** is a true and correct copy of excerpts from the March 30, 2023 Video-Recorded Deposition of Sean O'Keefe.

60. Attached hereto as **Exhibit 59** is a true and correct copy of GOLI 0038765, produced by Goli Nutrition in this matter, showing manufacturer's statement that Goli Nutrition's ACV Gummies are made with vinegar containing the "mother".

61. Attached hereto as **Exhibit 60** - Omitted

62. Attached hereto as **Exhibit 61** are true and correct copies of GOLI 0089660, GOLI 0094210, GOLI 0106103, and GOLI 0166955, all produced by Goli Nutrition in this matter, showing Goli Nutrition's vegan certifications.

63. Attached hereto as **Exhibit 62** is a true and correct copy of GOLI 0167173, produced by Goli Nutrition in this matter, showing correspondence wherein ashwagandha extract supplier confirms that the vegan extraction process results in the same amount of withanolides compared to the non-vegan extraction process.

64. Attached hereto as **Exhibit 63** is a true and correct copy of excerpts from the March 18, 2023 Remote Video Deposition of Alyson Mitchell, Ph.D.

65. Attached hereto as **Exhibit 64** is a true and correct copy of excerpts from the December 21, 2022 Deposition of Nisha Nonato.

66. Attached hereto as **Exhibit 65** is a true and correct copy of GOLODE_00011267-68, produced by GOLO in this matter, showing a Eurofins analytical report.

67. Attached hereto as **Exhibit 66** is a true and correct copy of excerpts from the March 3, 2023 Rebuttal Report by Lawrence J. Cheskin, MD, FACP, FTOS.

68. Attached hereto as **Exhibit 67** Omitted

69. Attached hereto as **Exhibit 68** are true and correct copies of GOLI 0038436 and GOLI 0106122, produced by Goli Nutrition in this matter, showing Goli Nutrition's "organic" certifications.

70. Attached hereto as **Exhibit 69** is a true and correct copy of GOLODE_00024173, produced by GOLO LLC in this matter, showing an email between Christopher Lundin and Chris Ungermann.

71. Attached hereto as **Exhibit 70** is a true and correct copy of excerpts from the March 22, 2023 Oral Deposition of Dr. Yoram (Jerry) Wind.

72. Attached hereto as **Exhibit 71** is a true and correct copy of excerpts from the March 21, 2023 Video-Recorded Deposition of Timothy Calkins.

73. Attached hereto as **Exhibit 72** is a true and correct copy of GOLODE_00088237, produced by GOLO LLC in this matter, showing GOLO studies.

74. Attached hereto as **Exhibit 73** is a true and correct copy of excerpts from the March 8, 2023 Videotaped Deposition of Daniel Merenstein, M.D.

75. Attached hereto as **Exhibit 74** is a true and correct copy of GOLI 003436, produced by Goli Nutrition in this matter.

76. Attached hereto as **Exhibit 75** are true and correct copies of GOLI 0102086-108, GOLI 0102115-126, GOLI 0102129-33, GOLI 0102140-45, all produced by Goli Nutrition in this matter.

77. Attached hereto as **Exhibit 76** - Omitted

78. Attached hereto as **Exhibit 77** is a true and correct copy of a demonstrative version of document produced by Goli Nutrition in this matter bearing the Bates-Number GOLI 0147697.

79. Attached hereto as **Exhibit 78** is a true and correct copy of GOLODE_00144478-482, produced by GOLO in this matter.

80. Attached hereto as **Exhibit 79** is a true and correct copy of a printout from GOLO's website at <https://www.golo.com/pages/shop-golo> dated April 14, 2023.

81. Attached hereto as **Exhibit 80** is a true and correct copy of a document produced by GOLO in this matter bearing the Bates-Number GOLODE_00145190, showing Task Force response to GOLO.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in San Diego, CA on
April 14, 2023

/s/ *Melissa A. Reinckens*

Melissa A. Reinckens